



आरत का राजपत्र

The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 1

PART II—Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 35 | नई दिल्ली, शुक्रवार, नवार्ष 17, 1992/आषाढ़ 26, 1914

No. 35] NEW DELHI, FRIDAY, JULY 17, 1992/ASADHA 26, 1914

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 17th Ju'y, 1992/Asadha 26, 1914 (Saka)

The following President's Act is published for general information:—

THE JAMMU AND KASHMIR LAWS (AMENDMENT) ACT, 1992

NO. 3 OF 1992

Enacted by the President in the Forty-third Year of the Republic of India.

An Act further to amend certain Jammu and Kashmir Acts.

In exercise of the powers conferred by section 3 of the Jammu and Kashmir State Legislature (Delegation of Powers) Act, 1992, the President is pleased to enact as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Jammu and Kashmir Laws (Amendment) Act, 1992.

(2) It shall come into force at once.

Short
title and
com-
mence-
ment.

CHAPTER II

AMENDMENT TO THE EVIDENCE ACT, SAMVAT 1977

Ins-
er-
tion of
new
section
114D in
Jammu
and
Kash-
mir Act
XIII of
Samvat
1977.

Presum-
ption of
criminal
conspi-
racy
against
the per-
son whose
release
has been
sought.
Jammu
and
Kashmir
Act XII of
Samvat
1989.

Repeal
and
saving.

2. After section 114C of the Evidence Act, Samvat 1977 (hereinafter referred to as the Evidence Act), the following section shall be inserted, namely:—

“114D. In a prosecution for criminal conspiracy under section 120B of the Jammu and Kashmir State Ranbir Penal Code, Samvat 1989 to commit the offences of kidnapping or abduction punishable under Chapter XVI of the said Code and to commit any of the offences in continuation thereof, where it is proved that the person or persons demanding release of a detained person in lieu of release of the kidnapped or abducted person and the detained person are associated for achieving a common cause or design by illegal acts or acts which are not illegal, by illegal means, the court shall presume the detained person is a conspirator in committing the offence or offences.”.

3. (1) The Evidence (Amendment) Act, 1990, being Governor's Act No. XV of 1990, is hereby repealed.

Gover-
nor's Act
No. XV
of 1990.

(2) Notwithstanding such repeal, anything done or any action taken under the Evidence Act, as amended by the said Governor's Act, shall be deemed to have been done or taken under the provisions of this Chapter.

CHAPTER III

AMENDMENT TO THE GENERAL CLAUSES ACT, SAMVAT 1977

Amend-
ment of
Jammu
and
Kashmir
Act XX
of Samvat
1977.

4. In clause (24) of section 3 of the General Clauses Act, Samvat 1977 (hereinafter referred to as the General Clauses Act), after the word “judicature”, the following shall be inserted, namely:—

“and every person appointed as Advisor to the Governor consequent upon the issuance of a Proclamation under section 92 of the Constitution of Jammu and Kashmir or under article 356 of the Constitution of India.”.

Governor's Act
No. XIV
of 1990
and
No. XIV
of 1990.

5. (1) The General Clauses (Amendment) Act, 1990 and the General Clauses (Second Amendment) Act, 1990, being Governor's Acts No. IX of 1990 and XIV of 1990, are hereby repealed.

Repeal
and
saving.

(2) Notwithstanding such repeal, anything done or any action taken by any person by virtue of the General Clauses Act, as amended by the said Governor's Acts, shall be deemed to have been done or taken by that person by virtue of the provisions of this Chapter.

CHAPTER IV

AMENDMENT TO THE TRANSFER OF PROPERTY ACT, SAMVAT 1977

6. After clause (g) of section 140 of the Transfer of Property Act, Samvat 1977 (hereinafter referred to as the Transfer of Property Act), the following clause shall be inserted, namely:—

Amendment of
section
140 of
Jammu
and
Kashmir
Act XLII
of Sam-
vat 1977.
Jammu
and
Kashmir
Act XVI
of 1988.

“(h) a transfer of immovable property in favour of Shri Mata Vaishno Devi Shrine Board, constituted under the Jammu and Kashmir Shri Mata Vaishno Devi Shrine Act, 1988, for the fulfilment of the objectives of the said Act.”.

Governor's Act
No. IV
of 1990.

7. (1) The Transfer of Property (Amendment) Act, 1990, being Governor's Act No. IV of 1990, is hereby repealed.

Repeal
and
saving.

(2) Notwithstanding such repeal, anything done or any action taken under the Transfer of Property Act, as amended by the said Governor's Act, shall be deemed to have been done or taken under the provisions of this Chapter.

CHAPTER V

AMENDMENTS TO THE LEVY OF TOLLS ACT, SAMVAT 1995

8. In section 8 of the Jammu and Kashmir Levy of Tolls Act, Samvat 1995 (hereinafter referred to as the Levy of Tolls Act),

Amend-
ment of
section 8
of Jammu
and
Kashmir
Act VIII
of Sam-
vat 1995.

(a) in sub-section (1), for the figures and word “100 rupees”, the figures and word “5,000 rupees” shall be substituted;

(b) sub-section (2) shall be omitted.

Substitution of sections 13 and 14.

Offences by whom punishable.

Appeals and revision.

9. For sections 13 and 14 of the Levy of Tolls Act, the following shall be substituted, namely:—

“13. (1) The officer-in-charge of the toll-gate or station may, by order, impose fine on any person guilty of an offence under section 8.

(2) Before passing an order under sub-section (1), such officer shall give the person in default an opportunity of being heard.

(3) The fine imposed under sub-section (1) may, on a requisition being made in this behalf by the officer inflicting fine, be realised by a Magistrate having jurisdiction as if it had been inflicted by himself.

14. (1) Any person aggrieved by an order passed under sub-section (1) of section 13 may, within a period of three months from the date of such order, prefer an appeal before the Deputy Excise Commissioner (Executive) of the Province where such order has been passed by an officer below the rank of Deputy Commissioner and in any other case, before the Excise Commissioner.

(2) Every order passed in appeal under this section shall, subject to the powers of revision conferred by sub-section (3) and (4), be final.

(3) The Excise Commissioner may, at any time, call for and examine the record of any order passed by the Deputy Commissioner under sub-section (1), for the purpose of satisfying himself as to the legality of such order and may pass such order in reference thereto, as he may deem fit.

(4) The Government may, at any time, call for and examine the record of any order passed by the Excise Commissioner under sub-section (1) for the purpose of satisfying itself as to the legality of such order and may pass such order in reference thereto as it may deem fit:

Provided that no order under sub-section (3) or sub-section (4), which is pre-judicial to any person, shall be passed without giving such person an opportunity of being heard.”.

Repeal and saving.

10. (1) The Levy of Tolls (Amendment) Act, 1990, being Governor's Act No. XI of 1990, is hereby repealed.

Governor's Act No. XI of 1990.

(2) Notwithstanding such repeal, anything done or any action taken under the Levy of Tolls Act, as amended by the said Governor's Act, shall be deemed to have been done or taken under the corresponding provisions of this Chapter.

CHAPTER VI

AMENDMENTS TO THE JAMMU AND KASHMIR
REPRESENTATION OF THE PEOPLE ACT, 1957

11. In the Jammu and Kashmir Representation of the People Act, 1957 (hereinafter referred to as the Representation of the People Act), for clause (b) of sub-section (1) of section 3, the following clause shall be substituted, namely:—

“(b) a Deputy Election Commissioner nominated by the Chief Election Commissioner.”;

Amend-
ment of
section
3 of Jam-
mu and
Kashmir
Act IV
of 1957.

12. In the Representation of the People Act, in section 3A, in sub-section (1), the following provisos shall be added at the end, namely:—

“Provided that when the Legislative Assembly stands dissolved, the five members of the dissolved Legislative Assembly earlier nominated by its Speaker shall cease to be Associate Members of the Commission and in their place, three Associate Members shall be nominated by the Governor in consultation with the Chairman of the Legislative Council, from amongst the members of the Legislative Council, and two Associate Members shall be nominated by the Governor in consultation with the Speaker of the Lok Sabha from amongst the members of the Lok Sabha elected from the State of Jammu and Kashmir:

Amend-
ment of
section
3A.

Provided further that where the Delimitation Commission is constituted during a period when the Legislative Assembly stands dissolved, the five Associate Members of the Commission shall be nominated by the Governor in the same manner as prescribed in the preceding proviso:

Provided also that where for any reason election to the House of the People for electing Members from the State is not held, the Commission shall have only three Associate Members referred to in the first proviso.”

Governor's
Act XVI
of 1990.

13. (1) The Jammu and Kashmir Representation of the People (Amendment) Act, 1990, being Governor's Act No. XVI of 1990, is hereby repealed.

Repeal
and sav-
ing.

(2) Notwithstanding such repeal, anything done or any action taken under the Representation of the People Act, as amended by the said Governor's Act, shall be deemed to have been done or taken under the provisions of this Chapter.

CHAPTER VII

AMENDMENT TO THE JAMMU AND KASHMIR
GENERAL SALES TAX ACT, 1962

Insertion
of section
8C in
Jammu
and
Kashmir
Act XX
of 1962.

Special
provision
in the
interest of
industrial
develop-
ment.

Repeal
and
saving
Governor's
Act
No. XVIII
of 1990.

14. After section 8B of the Jammu and Kashmir General Sales Tax Act, 1962 (hereinafter referred to as the General Sales Tax Act), the following section shall be inserted, namely:—

“8C. Notwithstanding anything to the contrary contained in sections 7 and 8, the Government may, if satisfied that it is necessary and expedient so to do in the interest of industrial development of the State, defer the payment of admitted or assessed tax by such class of industries on the sale of their finished products for such period and subject to such conditions as may be prescribed.”

15. (1) The Jammu and Kashmir General Sales Tax (Amendment) Act, 1990, being Governor's Act No. XVIII of 1990, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the General Sales Tax Act, as amended by the said Governor's Act, shall be deemed to have been done or taken under the provisions of this Chapter.

CHAPTER VIII

AMENDMENT TO THE JAMMU AND KASHMIR
PUBLIC SAFETY ACT, 1978

Amend-
ment of
section 10
of
Jammu
and
Kashmir
Act VI of
1978.

Repeal
and sav-
ing.

16. In clause (b) of section 10 of the Jammu and Kashmir Public Safety Act, 1978 (hereinafter referred to as the Public Safety Act), the words “in the State” shall be omitted.

17. (1) The Jammu and Kashmir Public Safety (Amendment) Act, 1990, being Governor's Act No. I of 1990, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Public Safety Act, as amended by the said Governor's Act shall be deemed to have been done or taken under the provisions of this Chapter.

Governor's
Act No.
1 of
1990.

R. VENKATARAMAN,
President.

—
K. L. MOHANPURIA,
Secy. to the Govt. of India.

Reasons for the enactment

The Jammu and Kashmir Evidence Act, Samvat 1977 was amended during the Governor's Rule by Governor's Act XV of 1990 with a view to deter abduction and kidnapping of persons by extremists for the purpose of securing release of their associates under detention.

2. The General Clauses Act, Samvat 1977 was amended during the Governor's Rule by Governor's Act IX of 1990 and by Governor's Act XIV of 1990, with a view to confer the status of Ministers on the Advisors to the Governor for the smooth discharge of their duties and for exercising certain powers under various laws during the period the Governor assumes the functions of the Government of the State under section 92 of the Constitution of Jammu and Kashmir or during the period of President's Rule promulgated in the State under article 356 of the Constitution of India.

3. The Transfer of Property Act, Samvat 1977 was amended during the Governor's Rule by Governor's Act IV of 1990 with a view to enable Shri Mata Vaishno Devi Shrine Board to acquire land for the fulfilment of the objectives of the Jammu and Kashmir Shri Mata Vaishno Devi Shrine Act, 1988.

4. The Levy of Tolls Act, Samvat, 1995 of the State was amended by the Governor's Act XI of 1990 in order to increase the penalty for evasion of toll. The Governor's Act also provided for certain procedural changes to streamline the process of levying and collection of fine and for cutting short delay.

5. The Jammu and Kashmir Representation of the People Act, 1957, was amended during the Governor's Rule by the Governor's Act XVI of 1990 with a view to authorise the Governor to nominate three members from the Legislative Council and two members from amongst the Members elected to the House of the People (Lok Sabha) from the State to be associated with the Delimitation Commission. As at present there are no elected members from the State in Lok Sabha, provisions is also being made to provide for nomination of three Associate Members from amongst the members of the Legislative Council in such an eventuality. Moreover, under section 3 of the Act, the Chief Election Commissioner has to function as an *ex-officio* member of the Delimitation Commission. The Election Commission of India has intimated that the Chief Election Commissioner has been, in status, equated with the Judge of the Supreme Court and the Delimitation Commission is headed by a Judge of the High Court. It would, therefore, be in the fitness of things if, instead of the Chief Election Commissioner, a Deputy Election Commissioner should be a member of the Delimitation Commission. Besides providing for re-enactment of the aforesaid Governor's Act, the proposed amendments provide for inclusion of necessary provision for giving effect to the above proposal.

6. The Jammu and Kashmir General Sales Tax Act, 1962 was amended by Governor's Act XVIII, 1990 to provide for a special provision in the interest of industrial development of the State by empowering the State Government to defer payment of admitted or assessed tax in relation to such class of industries on the sale of their finished products for such period and subject to such conditions as may be prescribed by rules.

7. The Jammu and Kashmir Public Safety Act, 1978 was amended by Governor's Act I of 1990 for making it possible for the State to shift the detainees outside its territory.

8. All the amendments referred to in paragraphs 1 to 7 (barring one referred to in paragraph 5) being laws enacted by the Governor and therefore, temporary in nature in terms of section 92 of the Constitution of Jammu and Kashmir, will cease to have effect with effect from the 18th day of July, 1992. Subject to the modification referred to in paragraph 5 above, the present enactment, seeks to replace the above mentioned Governor's Acts by a President's Act.

9. Parliament has, under article 357(1) (a) of the Constitution, conferred on the President the power of the Legislature of the State of Jammu and Kashmir to make laws vide the Jammu and Kashmir State Legislature (Delegation of Powers) Act, 1992 (21 of 1992).

10. Under the proviso to sub-section (2) of section 3 of the Jammu and Kashmir State Legislature (Delegation of Powers) Act, 1992, the President shall, before enacting any President's Act, whenever he considers it practicable to do so, consult a Committee constituted for the purpose, consisting of members of both Houses of Parliament. In view of the urgency of the matter, it is not practicable to consult the Committee. This Bill is, accordingly, being enacted without reference to the Committee.

MADHAV GODBOLE,
*Secretary to the Govt. of India,
Ministry of Home Affairs.*